

21 Brokerage

BROKERAGE AS A PART OF THE REAL ESTATE BUSINESS

Overall, the real estate business consists of the production, marketing and financing of real property.

Real estate brokerage involves *agency* directed, *for compensation*, primarily toward the sale, exchange, lease, rental, financing, or managing of real property or a business opportunity.

OTHER SPECIALISTS

Real estate brokers deal frequently with other specialists in the real estate business: appraisers, surveyors, engineers, financial institutions, title companies, escrow agents, architects, contractors, pest control inspectors, credit reporting agencies, attorneys, and accountants. A broker should establish and maintain good working relationships with these fellow professionals.

OPERATIONS

With regard to the sale of real property, brokerage operations may be divided into several elements:

- securing listings (developing an inventory) through leads, referrals, and direct canvassing;
- prospecting for buyers through various forms of advertising;
- negotiating or bringing together a “meeting of the minds” of buyer and seller;
- assisting in whatever manner necessary with closing (transfer of the property by the required instruments).

Typically, brokerage firms compete for listings and cooperate with other brokers who desire to find buyers for the listings.

OFFICE SIZE - MANAGEMENT

A small office will conduct its operations successfully only if the broker is a good salesperson *and* manager. The medium-sized firm is customarily manned by a “sales manager broker.” In a large office, the broker generally has only executive and administrative duties. This broker-owner employs one or more sales managers and an office staff. Whatever the office size, a broker must maintain proper records and documents and be certain that the office is well organized.

CAREER BUILDING

A person considering a career in real estate brokerage should be aware of the following:

- Other selling experience is valuable, but selling real estate is different because:
 - a. The product is more complex and individualized.
 - b. The sales period is longer and more tedious, requiring patience and effort.
 - c. The broker must be familiar with and fulfill many legal requirements.
 - d. Real estate is usually the largest single purchase a buyer will ever make.

- The broker must have in-depth knowledge of the city and district in which the broker seeks to operate.
- The broker must know the specific product being marketed: its value; its construction; its neighborhood; and the type of buyer who will be attracted.
- A real estate brokerage is very closely identified with the person running it. As Emerson said, “A business is the lengthening shadow of the man.” A broker should be established in the community and active in civic affairs.

THE BROKER AND THE NEW SALESPERSON

Office and personal characteristics crucial to the success of a new salesperson are:

- The broker is available for consultation and makes certain that the salesperson is trained, informed and up-to-date.
- The broker has an organizational chart and plan. The salesperson’s position and duties are clear. The broker must constantly evaluate the salesperson’s attitude, knowledge, transaction documents, and production.

SPECIALIZATION

Residential selling probably accounts for more than 75 percent of sales made by the typical realty office. After making a good start in general home selling, the licensee may wish to specialize and become an expert in only one particular area of brokerage, such as:

- homes of a defined district of the city, usually within 10 or 15 miles of the office;
- homes within a certain price range;
- residential rentals; and
- specific types of property: farm, commercial, industrial, multiple units, motels, business opportunities, franchising, tract homes or mobilehomes.

If a licensee wishes to leave general brokerage after acquiring extended experience, consideration may be given to becoming one of the following:

- licensed appraiser;
- real estate investment counselor;
- subdivider;
- builder;
- property manager;
- mortgage loan correspondent or agent;
- syndicator;
- franchise investment specialist;
- commercial/industrial property leasing agent; or
- business opportunities specialist.

A BROKER’S RELATED PURSUITS

A broker may be engaged in related pursuits which we might term the allied functions. The broker may: be licensed to appraise property on a fee basis; act as an adviser or consultant in real estate investment; operate a property insurance business; or offer notary public services.

Subdividing/developing

A real estate broker might select the production function of real estate and become a producer or manufacturer by taking “raw” land and converting it into higher priced land to suit the needs of the community. The broker-developer may construct dwellings or commercial buildings upon the subdivided land or even develop an entire community. Once these products have been completed, the broker-developer may then proceed to market them through other agents or through the broker’s own organization. For this specialization in real estate, the broker must have a suitable contractor’s license or work with or for a licensed contractor and comply with subdivision laws.

Notary functions

Often a broker provides notary services as a convenience to clients and as a service intended for the general public.

A notary must keep a sequential journal of notarial acts and be certain that the person whose signature on a document is to be acknowledged personally appears before the notary and provides acceptable forms of identification. An acknowledged signature is supposed to provide protection for individuals who rely on the notary’s act. This protection will not be considered trivial by an individual who must rely on it while enforcing a contract in court.

Effective January 1, 1996, Government Code Section 8206 requires that a notary public’s journal include the right thumb print of a person signing a deed, quitclaim deed, or deed of trust affecting real property. (The statute specifies alternatives if the right thumb print is not available.) Government Code Section 8211 sets forth maximum fees for various notarial functions.

Insurance

Most property insurance is sold through specialized insurance agencies. It is common, nevertheless, for the larger real estate brokerage offices to represent insurance companies in placing policies. Insurance is a natural feeder business or extra source of income for the real estate broker who taps the lead at its source: sales transactions originating in the broker’s office.

A real estate broker who also acts in the capacity of an insurance agent is acting as the agent of the insurance underwriter and is governed by the carrier’s instructions. It is incumbent upon the agent to secure competitive rates and charge the client no more than the latter could obtain in the open market. Of course, the client should always have the opportunity of selecting his or her own source of insurance.

PROFESSIONALISM

Staying Informed - Disclosures

Real estate licensees must keep current with changing real estate laws, technological changes, and trends impacting the broad field of real estate.

To illustrate, consider the ever-increasing responsibilities imposed upon real estate licensees and their principals under various disclosure laws. (See also Chapter 22.)

For example, Civil Code Section 2956 requires that in sales of residential property containing not more than four units, when the seller carries back purchase money financing, the licensee (“arranger of credit”) must provide a detailed written disclosure to the buyer and seller with respect to the credit transaction.

Civil Code Section 2079 sets forth the duty of a broker in a sales transaction of one to four dwelling units (including a manufactured home) to conduct a reasonably competent and diligent visual inspection of accessible areas of the property and disclose to the prospective purchaser all facts affecting the value or desirability of the property revealed by the broker's investigation. This law also applies to lease options, ground leases of land with one to four dwelling units and real property sales contracts.

Civil Code Section 2079.14 requires disclosure of real estate agency relationships.

Civil Code Section 1102.3 requires that, except under certain specifically defined situations, a seller of one to four dwelling units must provide the prospective transferee with a written disclosure statement covering such items as appliances, structural defects and modifications, possible easements, flooding, drainage, soil problems, and whether additions, structural modifications or other repairs or alterations are in compliance with the Building Code. The disclosure must be delivered to the prospective transferee as soon as practicable before the transfer of title. The required form includes space for the results of the inspection by the agent(s).

Finally, the general laws of agency require a real estate agent to disclose to his or her principal any material fact the agent knows (or should know) which will affect the principal's decisions in a transaction. In this regard, a good policy is: when in doubt, *disclose*.

MOBILEHOME SALES

This section discusses a real estate licensee's involvement in sales of mobilehomes. As to a mobilehome's status as real or personal property, see page 413. If a mobilehome is real property, Business and Professions (B & P) Code Section 10131 (a) is a real estate broker's authorization to negotiate a sale of the real property/mobilehome, with transfer effected by grant deed.

Sections 10131.6, 10131.7 of the B & P Code apply when a real estate licensee negotiates the sale of a mobilehome which is personal property.

Section 10131.6 provides that a real estate broker may list and sell a mobilehome if it has been registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code. This means that the mobilehome must be registered with the Department of Housing and Community Development (HCD). Section 10131.6 also prohibits a broker from maintaining a place of business where two or more mobilehomes are displayed and offered for sale unless the broker is also licensed as a mobilehome dealer.

Section 10131.7 prohibits the following:

- advertising or offering for sale in any manner any mobilehome unless it is either in place on a lot rented or leased for human habitation within an established mobilehome park (and the advertising or offering for sale is not contrary to any terms of a contract between the seller of the mobilehome and the owner of the mobilehome park), or the mobilehome is otherwise located, pursuant to a local zoning ordinance or permit, on a lot where its presence has been authorized or its continued presence and such use would be authorized for a total and uninterrupted period of at least one year;

- licensee's failure to withdraw an advertisement of a mobilehome within 48 hours after receipt of notice that the mobilehome is no longer available for sale, lease or exchange;
- representing a mobilehome as new;
- incorporation into the selling price of either an amount for licensing (except where buyer and seller agree to proration of the fee) or an amount for transfer of title of the mobilehome unless the licensee paid the fee in order to avoid late payment penalties;
- representation that a mobilehome is capable of being transported on California highways if the mobilehome does not meet all of the equipment requirements applicable to mobilehomes of Division 12 (commencing with Section 24000) of the Vehicle Code; failure to disclose any material fact respecting those equipment requirements;
- advertising or otherwise representing that no down payment is required in connection with the sale of a mobilehome when a down payment is in fact required and the buyer is advised or induced to finance the down payment with a separate loan; and
- failure to properly endorse, date, and deliver the certificate of ownership or certificate of title of the mobilehome to HCD (unless demanded in writing by the buyer) and deliver the registration card to the buyer.

Permit for Movement

A permit is required for moving a mobilehome over a public highway (Section 35790 of the Vehicle Code). The permit must be obtained from either the Department of Transportation or the local authority with respect to highways under its jurisdiction. The permit may be issued on a special or annual basis. Whenever a mobilehome is to be moved, licensees should contact HCD to insure that all laws and regulations pertaining to the move are followed.

Transferring Title (Personal Property)

Requirements for transferring title and registering a mobilehome with HCD are set forth in Section 18100.5, et seq., of the Health and Safety Code. Upon registration, HCD must issue a certificate of title to the registered owner or lienholder.

A real estate broker engaging in used mobilehome sales must, not later than the end of the tenth calendar day after the sale of a mobilehome that is subject to registration, give written notice of the transfer to the headquarters office of HCD on a form prescribed by that department.

All persons who acquire or release an interest in a mobilehome must notify HCD within 20 days of the date of acquisition or release (Health and Safety Code Section 18100.5). Both the transferor and transferee must sign the certificate of title. HCD will amend the registration and certificate card and provide a copy to all lienholders.

The transferee must also file a change of ownership statement with the county assessor.

Additional Information

Section 10147.5 Notice. The notice regarding the negotiability of the amount or rate of commission is applicable to the sale of mobilehomes, whether the mobilehome is real or personal property.

Out-of-state mobilehomes. Mobilehomes which are purchased out-of-state and brought into California are treated, for tax purposes, in the same manner as if they were originally registered in California. For example, if the mobilehome was sold new on or after June 30 1980, it will (unless excepted) be taxed as personal property. There are potential registration problems relating mainly to documenting ownership and out-of-state registration. Licensees should refer to Health and Safety Code Section 18075.5 et seq., for a detailing of the documentation necessary to register an out-of-state mobilehome in California.

Escrow. Unless performing acts which require a vehicle dealer's license, a real estate licensee is not required to use a third party escrow holder when selling a mobilehome.

When preparing escrow instructions, proration of usual items such as ground rent or taxes is permissible. If buyer and seller agree, the license fee may also be prorated.

If an escrow is used, the sale is complete upon the close of escrow. When no escrow is used, the sale is completed when the buyer has signed a purchase contract or security agreement and has taken possession of the mobilehome. Regardless of whether or not an escrow is used, the provisions of Health and Safety Code Sections 18100.5 and 18101 must be followed to effect a transfer of title and to perfect a security interest.

Mobilehome trailer parks. Licensees should review the Mobilehome Residency Law, Sections 798, et seq., of the Civil Code and the Mobilehome Parks Act, Sections 18200, et seq., of the Health and Safety Code.